I affirm and value **morality.**

The neg has the positive burden to defend a categorical moral rule that prohibits the use of deadly force against the perpetrator of domestic violence. Situation-based negations don’t disprove the resolution, because they do not deny the possibility of permission existing in other circumstances; in the aff world, survivors of domestic violence can still choose not to kill based on countervailing considerations. In addition, this preserves reciprocal burdens because it requires the neg to establish a positive advocacy rather than simply deny assumptions in the resolution. Reciprocity is key to fairness because it ensures equal strategy options.

For moral requirements to have any hold over agents, they must be intrinsically motivating. Requirements that depend on an external source of authority exist only as hypothetical imperatives, and are therefore escapable. James **Velleman[[1]](#footnote-1)** explains:

All of the **[Hypothetical] requirements** that Kant called hypothetical thus **depend** for their force **on** some **external** source of **authority – on a desire to which they refer,** for example, **or an agency by which they have been issued. And these requirements lack the inescapability of morality because the authority behind them is always open to question.** We can always ask why we should obey a particular source of authority, whether it be a desire, the U.S. Government, or even God. **But the requirements of morality, being categorical, leave no room for questions about why we ought to obey them.** Kant therefore concluded that moral requirements must not depend for their force on any external source of authority. // Kant reasoned that if moral requirements don’t derive their force from any external authority, then they must carry their authority with them, simply by virtue of what they require. That’s why Kant thought that he could derive the content of our obligations from the very concept of an obligation. The concept of an **obligation**, he argued, **is** the concept of **an *intrinsically* authoritative requirement** – a requirement that, simply by virtue of what it requires, forestalls any question as to its authority. **So if we want to know what we’re morally required to do, we must find something such that a requirement to do *it* would not be open to question. We must find something such that a requirement would carry authority simply by virtue of requiring that thing.**

In that desire-based or contractual obligations fail to hold categorical force, such theories of morality are incoherent. Moral obligations must instead be grounded in the inescapable features of moral agents. The only exercise which counts as fully inescapable is that of rational agency. Luca **Ferrero[[2]](#footnote-2)** provides two warrants:

(3.2) Agency is special under two respects. **First, agency is the enterprise with the largest jurisdiction.** **All ordinary enterprises fall under it.** To engage in any ordinary enterprise is *ipso facto* to engage in the enterprise of agency. **In addition,** there are instances of behavior that fall under no other enterprise but agency. First, intentional transitions in and out of particular enterprises might not count as moves within those enterprises, but they are still instances of intentional agency, of bare intentional agency, so to say. Second, **agency is the locus where we adjudicate the merits** and demerits **of participating in any** ordinary **[other] enterprise.** Reasoning whether to participate in a particular enterprise is often conducted outside of that enterprise, even while one is otherwise engaged in it. **Practical reflection is a manifestation of full-fledged intentional agency** but it does not necessary belong to any other specific enterprise. Once again, it might be an instance of bare intentional agency. In the limiting case, agency is the only enterprise that would still keep a subject busy if she were to attempt a ‘radical re-evaluation’ of all of her engagements and at least temporarily suspend her participation in all ordinary enterprises. // (3.3) The second feature that makes agency stand apart from ordinary enterprises is agency’s *closure*. **[Second,] Agency is closed under the operation of reflective rational assessment.** As the case of radical re-evaluations shows, ordinary enterprises are never fully closed under reflection. There is always the possibility of reflecting on their justification while standing outside of them. Not so for rational agency. **The constitutive features of agency** (no matter whether they are conceived as aims, motives, capacities, commitments, etc.) **continue to operate even when the agent is assessing whether she is justified in her engagement in agency. One cannot put agency on hold while trying to determine whether agency is justified because this kind of practical reasoning is the exclusive job of intentional agency.** This does not mean that agency falls outside of the reach of reflection. But even reflection about agency is a manifestation of agency. // Agency is not necessarily self-reflective but all instances of reflective assessment, including those directed at agency itself, fall under its jurisdiction; they are conducted in deference to the constitutive standards of agency. This kind of closure is unique to agency. What is at work in reflection is the distinctive operation of intentional agency in its discursive mode. **What is at work is not simply the subject’s capacity to shape her conduct in response to reasons for action but also her capacity both to ask for these reasons and to give them. Hence, agency’s closure under reflective rational assessment is closure under agency’s own distinctive operation: Agency is closed under itself.** // (3.4) To sum up, agency is special because of two distinctive features. First, agency is not the only game in town, but it is the biggest possible one. In addition to instances of bare intentional agency, any engagement in an ordinary enterprise is *ipso facto* an engagement in the enterprise of agency. Second, agency is closed under rational reflection. It is closed under the self-directed application of its distinctive discursive operation, the asking for and the giving of reasons for action. **The combination of these features is what makes agency [normatively] *inescapable*.** This is the kind of nonoptionality that supports the viability of constitutivism.

Though it may be logically possible to deny the use of practical agency, it is not normatively possible. There is no standpoint outside rationality from which one can decide whether to be a rational agent – hence, the categorical nature of moral claims relies on their appeal to our rational agency.

As practically-reasoning agents, we cannot will that our agency be limited without our consent. We have an innate, natural right to remain free from coercion by others, called *rightful honor*. Arthur **Ripstein[[3]](#footnote-3)** writes:

Kant never explicitly argues that the Universal Principle of Right **[Rightful honor] is the unique moral principle for rational beings who occupy space**, but an argument can be provided by analogy with the argument for the postulate of practical reason with regard to rights. That argument showed that the terms on which persons are entitled to use things other than their bodies must be formal rather than material, because otherwise the usability of usable objects would depend on the matter of other persons’ choices. // The same point applies here: **if you were prohibited from using your body in any way, or**, what comes to the same thing, **you were conditionally prohibited,** so that your entitlement to do anything with your own body was subject to the choice of others, as a material principle would demand (perhaps everyone, or even someone, had to approve any action you chose to perform), **your capacity to set and pursue your own purposes would be subject to their choice.** No material principle of that sort could be a universal law under the criteria set out in the *Groundwork,* because **as a rational being you could not will a** universal **law under which you could never set a purpose for yourself**, or one under which you could only do so with the leave of another. So once spatial forms of incompatibility are introduced, only the formal principle of outer freedom – the Universal Principle of Right – could govern the exercise of free but spatially individuated persons. Such an argument is not a derivation of the Universal Principle of Right from the Categorical Imperative; it only shows the former to be the legitimate extension of the latter. // **If moral persons are individuated spatially, then** the only way to have freedom under universal law is for **each embodied rational being** to have **[has], in virtue of its humanity, a right to its own person** – that is, to its own body. **Such a right must be innate, because nothing could count as an affirmative act establishing it – the right applies to any rational being that occupies space, because its right is nothing more than the right that it has to the space that it happens to occupy.** // As we saw in Chapter 2, what legal systems identify as “wrongs against the person” are, unsurprisingly, wrongs against the body, because your body just is your person. You do not occupy your body; your person occupies space. **Your body enables you to set and pursue purposes in space and time**, but you must do so in a way that is consistent with the ability of other embodied rational beings to set and pursue their purposes in space and time. As Kant notes, this compatibility can only be achieved in abstraction from the “*matter* of choice, that is, of the end each has in mind with the object he wants.” Instead, “all that is in question is the *form* of the relation of choice on the part of both, insofar as choice is regarded merely as *free*.” That is, the rational purposiveness of each is only consistent with the rational purposiveness of others if each person’s body is subject to his or her exclusive choice. Each person is prohibited from injuring or using the body of another. Injury and use in turn can be identified without reference to the maxim on which the wrongdoer acts. Personal injury is just injury to another’s person, that is, bodily damage; **the** familiar **legal wrong of battery** – an unauthorized touching of another’s person – **is the simplest case of using a person for a purpose he or she has not authorized. Injuring a person interferes with his purposiveness, either by depriving him of some of the powers he has** to set purposes, **or by using his powers** – his person – **for purposes he has not set.**

In that practical reason minimally establishes a moral claim to one’s person, it justifies the innate right of humans to be free from coercion by others. Hence, the criterion is **upholding rightful honor**, defined as not making yourself into a means for others. If a principle is inconsistent with an agent’s rightful honor, it is void and cannot make a legitimate claim on that agent. Thus, rightful honor is a test of the bindingness of moral norms. **Ripstein 2** clarifies:

The same right to be your own master within a system of equal freedom also generates what Kant calls an “internal duty” of **rightful honor**, which “**consists in asserting one’s worth as a human being in relation to others**, a duty expressed by the saying do not make yourself into a mere means for others but be at the same time an end for them.” Kant says that this duty can be “explained … as obligation from the right of humanity in our own person.” // Kant’s characterization of this as an “internal duty” may seem out of place, given his earlier characterization of the Universal Principle of Right in terms of restrictions on each person’s conduct in light of the freedom of others. But the duty of rightful honor is also relational: it is a duty because it is a limit on the exercise of a person’s freedom that is imposed by the Universal Principle of Right. **Just as the rights of others restrict your freedom,** so that you cannot acquire a right to anything by acting in ways inconsistent with the innate right of another person, so, too, the humanity in your own person restricts the ways in which you can exercise your freedom by entering into arrangements with others. Your innate right prevents you from being bound by others more than you can in turn bind them; **your duty of rightful honor prevents you from making yourself bound by others** in those ways. Rightful honor does not warn you away from some juridical possibility that would somehow be demeaning or unworthy. **You do not wrong yourself if you enter into a binding arrangement inconsistent with the humanity in your own person. Instead,** your duty of **rightful honor says that no such arrangement can be binding**, so no other person could be entitled to enforce a claim of right against you that presupposes that you have acted contrary to rightful honor.

Therefore, if the duty not to kill in response to domestic violence is inconsistent with survivors’ rightful honor, they are not bound to act in accordance with that duty. Accordingly, the sufficient neg burden is to demonstrate that rightful honor generates a categorical obligation not to kill.

And, put away your deontology blocks. I’m talking about Kant’s political philosophy rather than his ethical one – nowhere do I justify universal duties or the categorical imperative. Rightful honor only requires that I value my *own* capacity for practical reason, and this means that “Killing isn’t universalizable!” doesn’t link to the standard.

I contend that restoring their rightful honor justifies survivors’ use of deadly force. First, murder in self-defense is justified because it is simply resistance to the use of one’s agency by another. Barbara **Herman[[4]](#footnote-4)** writes:

So, first, **why may I kill to resist aggression?** What reasons could I offer to rebut the presumption against violence? It is not that I may kill in order to keep myself from becoming dead – something I do not want to happen. Death is part of the fate of human agents. The kind of value or moral standing I have as an agent is not lost or compromised in dying. What **a maxim of aggression** or violence **involves**, morally speaking, is **the discounting of my agency. The aggressor would use me** (take my life) **for his own purposes.** This is what I resist and claim moral title to refuse. **Just as I cannot agree to become someone’s slave, so I must not assent to be the victim of aggression.** This gives more than permission for an act of self-defense when that is necessary to resist the aggression; it imposes a requirement that aggression be resisted. Though I may not be able to prevent the aggressor’s success, I may not be passive in the face of aggression. Passivity here is like complicity. It does not follow from a requirement of nonpassivity that I must act in self-defense. I might have a commitment to resist and have reason not to do any of the things available as acts of resistance (suppose they involved the loss of innocent lives). What is clear is this it is not the fact of death but the death as a means to the aggressor’s purposes that gives moral title to resistance and self-defense. The circumstances of aggression rebut the presumption against violence. // This same fact blocks reciprocity of complaint. **The aggressor acts on a maxim that involves the devaluation of my agency. I do not. I am not acting to save my life** as such, **but to resist the use of my agency** (self) by another. Acting to save my life (as something valuable to me) would be to act for just another purpose. The moral standing of my agency – what makes it the source of reasons for others to refrain from acting against me – is not the good (to me) of being alive. Acting to sustain the integrity of my agency is to act for a morally necessary end. Thus, **since my maxim of resistance is not a maxim of aggression as a means, the original aggressor cannot renew his attack on morally superior grounds.** I am not acting to preserve myself through violent means. In stopping aggression with force, I am asserting my status as a rational agent. It is an act of self-respect.

Disputes over self-defense arise because both parties make inconsistent claims about who is justified in aggression. Accordingly, it’s a violation of your rightful honor to submit to any restrictions on your right to self-defense, so imminence and proportionality constraints aren’t morally binding. **Ripstein 3**:

Actual legal systems refuse the defense of self-defense to an initial aggressor, and suppose that at most one of the two can be acting defensively. The other has, at most, some sort of excuse of mistake. This structure is not an accident of positive law, but rather a reflection of the normative structure of self-defense: **your right to defend yourself only holds against an aggressor. Yet** just as the question of who is an aggressor in a state of nature can be answered by nothing other than what seems good and right to the person defending himself, so, too, these higher-order constraints that require there be only one genuine justified defender can only be applied by the parties themselves. It is thus a structural feature of the situation that **it is possible for each party to believe**, in good faith, **that the other is the sole aggressor.** They each make inconsistent claims of right. However, **once they have made inconsistent claims** of right, **there is no answer, apart from what seems good and right to each of them.** // The idea that there can be no answer in a dispute about defensive force may seem surprising, because the question of who was the initial aggressor appears to be a purely factual one. But the question of whether defensive force is warranted is not equivalent to the factual question of who made the first move. **Your right to defend yourself against an aggressor rests on your belief that someone is wrongfully attacking you, but in a state of nature only you are in a position to judge whether you are under attack, because you need not defer to anyone else. The entitlement to use defensive force is a reflection of** the first Ulpian precept, **rightful honor. To defer to the judgment of another** about whether something is in fact a case of aggression **is**, again, **to allow yourself to be treated as a mere means.** If the other in question is an apparent aggressor, the difficulty with failing to defend yourself is clear. You also have an obligation (the second Ulpian precept) to avoid wronging others. The problem is that the two obligations do not form a consistent set. The other person’s unilateral judgment must be both something to you via the second Ulpian precept – the thinks he is defending himself, and you must not wrong him – but also nothing to you, via the first – you don’t have to defer to his judgment. Only positive law can guarantee a determinate answer to the question of who the aggressor was, because only under positive law can there be an “irreproachable” judge of such matters. // **The imperfection of the right to self-defense does not, however, render that right merely provisional, because it is a conclusive authorization to coerce. Your right to repel those who invade the space occupied by your body does not require an omnilateral authorization.** It is imperfect because it is not an authorization under universal laws, since any such authorization would have to be a member of a necessarily consistent set. The inconsistency in the right to self-defense in these cases is contingent, depending as it does on a factual question of whether the same or different things will seem “good and right” to different people. The problem, however, is conceptual: the idea of a rightful condition contrasts with “savage violence” because in the former, disputes are resolved by law, and in the latter, by force. How frequently force is used is entirely contingent, but that is exactly the point. Well-disposed and right-loving people might get into fewer disputes, but if so, it is still entirely contingent. You cannot be fully law-abiding without a lawgiver, no matter how “right-loving” you may be.

At best, only the state can fully settle the dispute between the parties, but in the resolutional context the state is necessarily absent. Domestic violence only becomes repeated when the state doesn’t get involved, because police involvement deters repetition of abuse. **Felson, *et al.*** in ‘05:[[5]](#footnote-5)

In Table 2, we present **the** main additive model, based on **logistic regression [model]**. To determine whether the model adequately fit the distributional properties of the data, we performed a Hosmer and Lemeshow test (2000). This test **indicated** a reasonably good fit (Chi-square = 10.3, df = 8, p = .24). The coefficients in Table 2 reveal **strong evidence of a deterrent effect for reporting.** (Recall that the sign is reversed because reporting without arrest is the reference category). The results show that **offenders are much less likely to repeat** their offense **when an incident is reported** to the police. **Not reporting increases the odds of a repeat**ed offense **by 89%** (e.64 – 1 = .89). However, our results do not indicate evidence of a deterrent effect for arrest. The coefficient is in the predicted direction, but it is small and not statistically significant. The results suggest that reporting deters offenders from committing another assault whether the police make an arrest or not.

And, there are multiple causative warrants why state failure means repeated abuse. **Felson 2** continues:

The effect of reporting on recidivism in this data is fairly strong. The result suggests that the reporting of partner violence to the police is a deterrent, even if the police do not make an arrest. **It may be that** a visit from **the police change**s **the offenders’ attitudes toward their behavior**. Offenders may redefine their behavior **as** a **criminal** act **rather than** a **private** matter. It may also change their perception of the costs of further violence. **Offenders may be deterred by** the **stigma** associated with a visit by the police for domestic violence**, or they may anticipate future arrest** if they re-offend. Future research should examine how offenders view police intervention and why it deters them from re-offending. **Finally, it is possible that the couples seek counseling** or some other social services **as a result of the** police **visit** and that these interventions influence the offender. In other words, these factors may mediate the reporting effect.

Thus, there would not even be a context of repeated domestic violence outside a situation of state failure. And, even if I lose the empirics debate, the family is the most basic unit of a civil society, but because relationships are governed by familial relations rather than law, individuals within a family are in a state of nature. Andy **Blunden[[6]](#footnote-6)** writes:

In his day, right exists only as an “ought” in the domain of relations between states; international relations in the absence of law regulating the rights of subjects is a *real* abstraction, and little effort of the imagination is required to make a beginning from a “state of nature” in this domain. Also, **within the family, right does not exist, because here the “state of nature” entails immediate relations of** support and **care, not right and justice. Only as these relations of mutual support break down or as the family property is passed on to the next generation, does the concept of right begin to have a bearing** in family relations. Thus, **when we talk of the “state of nature” from which spirit emerged in the form of rational relations between** independent **subjects, we have** on the one hand, **natural relations of mutual support** and collaboration **governed, not be rational relations of law, but rather by** unreflective **relations based on kinship and coverture**, and on the other hand, relations of indifference and mutual alienation between corporate subjects on the “international” domain.

Individuals necessarily possess a right of self-defense in a state of nature, because the government’s claim to kill in defense of its citizens is derived from its citizens’ private right to self-defense. Michael **Thompson[[7]](#footnote-7)** writes:

These **rights are all handed over to the state by consent**, of course, and the corresponding forms of justification go with them. But with self-defense a further subtlety evidently arises. **Even where a state exists** it will often happen that **the attack** which would justify a defensive response – justify it for everyone in the state of nature, and for the magistrate in civil society – **occurs where and when the state is incapable of intervention. Here**, one wants to say that the rug is drawn back and the relation of **the parties are governed entirely by natural principles; the agents are in a** sort of **temporary** or provisional **state of nature.** // The argument for a right of private lethal self-defense that I have just given is of course just the one propounded by Locke in chapter III of *The Second Treatise of Government*. Its final stages might be handled differently. Hobbes, for example, simply argues that the right of self-defense is so important that it cannot be understood to be contracted away. Put otherwise, and in closer connection with jurisprudential concerns, our conclusion boils down to this: **insofar as a modern state claims a right to kill violent men in action**, without trial, **in defense of its** agents and **citizens, it is estopped from denying its citizens the same right when the state is inaccessible. Any argument that establishes the state’s right must rest on the individual’s possession of the same right in the state’s absence.** The right of private self-defense must thus be treated as a justification for killing by any liberal state.

If the state fails to maintain individuals’ status as freely legislating agents, then individuals are permitted to use their own private powers to prevent others from violating their rightful honor.

**Underview:** In order for morality to be prescriptive, any standard by which we judge the goodness of actions *must* allow agents the ability to ignore its force, but still stand as a system. Railton[[8]](#footnote-8) writes:

Authority is an impressive thing. At least, it is when it works. **We speak of rules binding us**, or being in force, **even when we would rather not comply. This suggests a certain image of what it would be to** explain or **ground normative authority.** But though sheer force is sometimes called upon to enforce norms, it is not much of a model of the coercive power” of norms as such. Rousseau noted that “If force compels obedience, there is no need to invoke a duty to obey”. A sufficiently great actual force simply is irresistible. Familiar rules and *oughts*, even stringent ones, are not like that—we can and do resist them, as Kant noted: “The moral law is holy (inviolable). Man is certainly unholy enough, but humanity in his person must be holy to him.” **Clearly the must here is not the must of something irresistible—the moral law is normatively, not actually, “inviolable”. Since an *ought* is to apply to use even when we fall short, its force** (and recognition thereof) **must leave that option open.** If “guidance by norms” is to play a nontrivial role in the explaining of an individual’s or group’s behavior, then the normative domain must be a domain of freedom as well as “bindingness”.

This is *not* the case with standards warranted by epistemology or ontology, since either it is the case that we can’t take actions that violate epistemology or ontology or reality or being ceases to exist, meaning that the obligation and theory cease to exist if we ignore them. Additionally, these arguments just beg the question of why we need to care about being or reality. Even if these place constraints on what morality can discuss, there must be a motivational reason to follow that moral theory. Absent a competing metaethical framework, they can’t motivate agents to act. At best, impacts back to ontology or epistemology terminate in denial of all constraints, since if we ignore being or reality we deny the foundation for morality itself. In the absence of a constraint, you auto-affirm. At worst, you ignore ontological and epistemological arguments because they’re not normative.

1. Velleman, James. “Introduction to Kantian Ethics.” *Self to Self: Selected Essays.* Cambridge: Cambridge UP, 2006. PDF. [↑](#footnote-ref-1)
2. Ferrero, Luca. “Constitutivism and the Inescapability of Agency.” Unpublished draft. 2009. Web. [↑](#footnote-ref-2)
3. Ripstein, Arthur. *Force and Freedom: Kant’s Legal and Political Philosophy.* Cambridge: Harvard UP, 2009. PDF. [↑](#footnote-ref-3)
4. Herman, Barbara. “Murder and Mayhem.” *The Practice of Moral Judgment.* Cambridge: Harvard UP, 1993. Google Books. [↑](#footnote-ref-4)
5. Felson, Richard; Ackerman, Jeffery; and Gallagher, Catherine. “Police Intervention and the Repeat of Domestic Assault.” *Criminology,* 43.3 (2005): 563–588. Web. http://www.ncjrs.gov/pdffiles1/nij/grants/210301.pdf. [↑](#footnote-ref-5)
6. Blunden, Andy. “Hegel on ‘State of Nature’.” 2007. Web. http://home.mira.net/~andy/works/state-of-nature.htm. [↑](#footnote-ref-6)
7. Thompson, Michael. “Aquinas, Locke, and Self-Defense.” *University of Pittsburgh Law Review* 57.677 (1995): 677 – 684. HeinOnline. [↑](#footnote-ref-7)
8. Railton, Peter. “Normative Force and Normative Freedom.” *Normativity*, ed. Jonathon Dancy. Wiley-Blackwell, 2000. [↑](#footnote-ref-8)